

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/3/2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

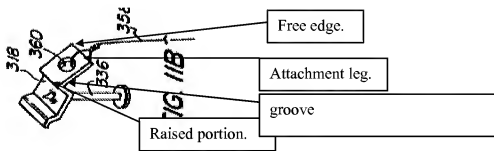
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 25 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Losada (6,273,316) in view of Olvera et al. (US 5,918,789).

With regard to claims 25 and 31, the reference of Losada discloses a fastener assembly feeding system (Fig. 11A) for use with a power actuated gun (10) comprising: a fastener assembly (318, 336) comprising a curved plate (318), the plate having a raised portion (see Fig. below) and a stud (336) frictionally held within the plate (318) at the raised portion, the curved plate (318) further having an attachment leg (see Fig. below) angularly attached to the curved plate (318), the attachment leg having a free edge (see Fig. below) away from where the attachment leg is attached to the curved plate (318); a track (316) adapted to receive the curved plate (318), and shaped to conformed with the curved shape of the plate in such a way as to

allow the plate to move within the track. Losada discloses the claimed subject matter to the degree that it does not show a track having curved cross-section on both sides of receiving portion.

Olvera et al.'s reference teaches a track having a curved cross-section as shown in Figures 3-5, conforming (to be in agreement) with the top plate portion of the shape of a fastener. In view of the teaching of Olvera, it would have been obvious to one skilled in the art to provide Losada with a track that will conform with the curved shape of the plate and fastener in order to closely receive substantially all the curved plate and stud.



4. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Losada (6,273,316).

With regard to claim 30, Losada reference discloses the claimed subject matter to the degree that it does not make a reference to the bending radius of the curved plate.

The bending radius of either the present invention or the prior art curved plate, is an engineering design consideration because of the track spacing to accommodate the curved plate. The skilled artisan would consider it important to include a bending radius of curved plate to be agreement with the plate track.

However, it would have been obvious engineering design consideration to one skilled in the art at the time of the invention to modify the bending radius of the curved plate of Losada to a desired specific bending radius in order to be accommodated in the track to yield predictable results.

Allowable Subject Matter

4. Claims 26-29 are allowed over prior art of record.

Response to Arguments

5. Applicant's arguments filed 10/3/2008 have been fully considered but they are not persuasive.

Applicant is arguing that the top side 221 of the elongated body member 208 has a concave surface" directly above *the flat* top surface (8) of the fastener head (6). This is not conformity. In the present invention, the track curves where the plate curves.

In Olvera, the track curves where the fastener does not.

Applicant's argument is not persuasive because concave shape is considered "curve-shaped", further "conformity" includes (to be in agreement). Therefore, Olvera meets the limitation.

Applicant is arguing that the track adapted to receive the curved plate, and shaped to conform with the curved shape of the plate is not taught by Losada.

The examiner contends that Olvera's teaching includes such feature as "track shaped to conform (to be in agreement) with the curved shape of the plate (top plate portion of the shape of the fastener Olvera)". Olvera et al.'s reference teaches a track having a curved cross-section

as shown in Figures 3-5, conforming (to be in agreement) with the top plate portion of the shape of the fastener.

The applicant has not overcome the *prima facie* burden of obviousness. The Examiner has provided sufficient showing to reject the claims under the reference of Losada in view of Olvera.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/N. C. C./
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721
10/23/2008.